

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA

RICHARD KRICK,)	
)	
<i>Plaintiff,</i>)	
v.)	CASE NO. 3:19-cv-216
MEDICAL DEVICE)	
BUSINESS SERVICES, INC.)	
)	
<i>Defendant.</i>)	

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, defendant Medical Devices Business Services, Inc., formerly known as DePuy Orthopaedics, Inc. (“DePuy”), hereby removes the above-captioned case to the United States District Court for the Western District of North Carolina. Removal is proper on the following grounds:

THE CASE OR CONTROVERSY

1. The present lawsuit was filed by Plaintiff Richard Krick on March 4, 2019, in the Superior Court Mecklenburg County, North Carolina, Cause No. 19-CVS-495058 (the “Lawsuit”).

2. The Lawsuit is a civil action in which Plaintiff alleges that he sustained injuries due to alleged defects in the DePuy Global Advantage Total Shoulder Implant System medical device implanted in Mr. Krick. [Compl. at ¶¶ 7-19.]

TIMELINESS OF REMOVAL

1. DePuy was served with the Lawsuit on April 15, 2019.

2. Defendant by this Notice removes this case to federal court on May 6, 2019.

3. Defendant’s Notice of Removal is therefore timely under 28 U.S.C. § 1446(b)(1) because this Notice is filed within 30 days after the earliest receipt by a defendant named in this

case, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief.

DIVERSITY EXISTS PURSUANT TO 28 U.S.C. § 1332

4. This Court has jurisdiction over this action under 28 U.S.C. § 1332 because (1) there is complete diversity of citizenship between the Plaintiff and the Defendant, and (2) the amount in controversy exceeds \$75,000, exclusive of interest and costs. Complete diversity existed both at the time the case was filed and at the time of removal.

DIVERSE CITIZENSHIP OF THE PARTIES

5. Plaintiff Richard Krick is a citizen and resident of Florida. [Compl. at ¶ 1.]

6. Defendant Medical Device Business Services, Inc. is incorporated in Indiana with its principal place of business in Warsaw, Indiana, and therefore is considered a citizen of Indiana for purpose of diversity jurisdiction. *See Hertz Corp. v. Friend*, 559 U.S. 77, 93 (2010) (holding that a corporation is a citizen of its place of incorporation and its “principal place of business,” which is “the actual center of direction, control, and coordination” of the corporation’s activities).

7. Therefore, there is complete diversity of citizenship between the parties.

AMOUNT IN CONTROVERSY EXCEEDS THRESHOLD

8. The Lawsuit alleges that Plaintiff suffered injuries as a result of defects in a medical device designed, manufactured, and sold by DePuy and implanted in Plaintiff.

9. Plaintiff alleges in his Complaint that he suffered and will suffer “severe pain [lasting most of one year]” and other “painful injuries.” [Compl. at ¶¶ 15, 24.]

10. It is widely recognized that personal injury claims facially meet the \$75,000 jurisdictional threshold. *See, e.g., In re Rezulin Prods. Liab. Litig.*, 133 F.Supp. 2d 272, 296 (S.D.N.Y. 2001) (finding that a complaint alleging various injuries from taking a prescription

drug “obviously asserts a claim exceeding \$75,000”); *Smith v. Wyeth, Inc.*, 488 F. Supp. 2d 625, 630-31 (W.D. Ky. 2007)(denying motion to remand); *Copley v. Wyeth, Inc.*, No. 09-722, 2009 WL 1089663 (E.D. Pa. Apr. 22, 2009) (same).

11. Thus, the amount in controversy in this matter exceeds \$75,000, exclusive of interest and costs, as required by 28 U.S.C. § 1332(a).

OTHER REMOVAL REQUIREMENTS MET

12. This Notice of Removal is in compliance with Rule 11 of the Federal Rules of Civil Procedure.

13. Copies of all pleadings filed and orders received in this matter are attached as Exhibit A.

14. Removal of this action is not prohibited by 28 U.S.C. § 1445.

WHEREFORE, Defendant hereby notifies the Court of the removal of this action from the Superior Court Mecklenburg County, North Carolina.

Dated: May 6, 2019.

Respectfully submitted,

/s/ Bradley M. Risinger

Bradley M. Risinger (NCSB #23629)

Matthew Nis Leerberg (NCSB #35406)

FOX ROTHSCHILD LLP

434 Fayetteville Street, Suite 2800 (27601)

P. O. Box 27525

Raleigh, North Carolina 27611

Telephone: (919) 755-8700

Facsimile: (919) 755-8800

brisinger@foxrothschild.com

*Attorney for Medical Device Business
Services, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of May, 2019, a copy of the foregoing was filed electronically and served upon the following counsel by First Class U.S. Mail.

Jonathan N. Narber
Barber Power Law Group, PLLC
205 Regency Executive Park Drive #200
Charlotte, North Carolina 28217

/s/ Bradley M. Risinger